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April 17, 2014

To: Supervisor Don Knabe, Chairman
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Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE

Executive Summary

This memorandum contains reports on the following:

- Pursuits of County Position on Legislation

- **AB 2604 (Brown).** This measure would amend workers' compensation provisions related to employer penalties for delayed or refused payments to: 1) broaden what is considered an unreasonable delay or refusal; and 2) allow for a higher, maximum penalty to employers whom have been deemed as unreasonably delaying or refusing workers' compensation awards. Therefore, unless otherwise directed by the Board, consistent with existing policy to oppose legislation that erodes reforms accomplished by FY 2003-04 and FY 2011-12 workers' compensation reform legislation, **the Sacramento advocates will oppose AB 2604.**
- **AB 2616 (Skinner).** This measure would expand the presumption of job-related injuries to cover hospital employees for methicillin-resistant staphylococcus aureus. Therefore, unless otherwise directed by the Board, consistent with existing policies to oppose legislation that: 1) mandates eligibility of additional employees for safety workers' compensation benefits or

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safety retirement benefit provisions; and 2) expands existing or creates new presumptions related to injuries, illnesses, diseases, or physical conditions that can be claimed as job-related for workers' compensation or service-connected disability retirement purposes, **the Sacramento advocates will oppose AB 2616.**

- **SB 1339 (Cannella).** This measure would require a county or the California Department of Health Care Services, before contracting with a certified Drug Medi-Cal provider, to obtain criminal history information for the owners and key staff of Drug Medi-Cal Program provider organizations. Therefore, unless otherwise directed by the Board, consistent with existing policies to support legislation that improves oversight of the State's Drug Medi-Cal program by implementing specified program enhancements, **the Sacramento advocates will support SB 1339.**

Pursuit of County Position on Legislation

AB 2604 (Brown), which as introduced on February 21, 2014, would amend workers' compensation provisions related to employer penalties for delayed or refused payments to: 1) broaden what is considered an unreasonable delay or refusal; and 2) allow for a higher, maximum penalty to employers whom have been deemed as unreasonably delaying or refusing workers' compensation awards.

Current workers' compensation law provides that certain proceedings, including for the recovery of compensation, to be considered by the California Workers' Compensation Appeals Board (WCAB). Existing law requires that when payment of compensation has been unreasonably delayed or refused, the amount of the delayed or refused payment be increased up to 25 percent or \$10,000, whichever is less. In these matters, the WCAB is required to use its discretion to accomplish a fair balance between the parties.

AB 2604 would amend these provisions to: 1) broaden the factors in which the WCAB may opine that a workers' compensation payment has been unreasonably delayed or refused to include, but not be limited to, consideration of the amount of the original award; the reason for and length of the delay; and whether there are prior violations of this section; and 2) require that when a payment has been deemed as unreasonably delayed or refused, the amount of the payment be increased up to 25 percent or \$10,000, whichever is more.

The Chief Executive Office Risk Management Branch (CEO-RMB) reports that the provisions of AB 2604 to expand the considerations for what is deemed as unreasonably delayed or refused workers' compensation payments are overly broad and not well defined. CEO-RMB indicates that AB 2604 would increase unfavorable and unjustified rulings for employers, including the County, as well as further increase costly litigation. Additionally, CEO-RMB reports that under AB 2604, when the WCAB has ruled that the County has unreasonably delayed or refused payments, the employers would be mandated to pay penalties equaling 25 percent of the payment or \$10,000, whichever is greater, instead of the lower amount as stipulated under current law. CEO-RMB further indicates that the worker's compensation reforms under SB 899 (Chapter 34, Statutes of 2004) and SB 863 (Chapter 363, Statutes of 2012) made significant changes aimed at eliminating inefficiencies and statutory loopholes that had resulted in excessive litigation and extraordinary employer costs. AB 2604 would represent a significant roll back of those reforms. County Counsel concurs with CEO-RMB's concerns.

This office recommends an oppose position on AB 2604. Therefore, unless otherwise directed by the Board, consistent with existing policy to oppose legislation that erodes reforms accomplished by FY 2003-04 and FY 2011-12 workers' compensation reform legislation and oppose legislation that increases workers' compensation benefits unless it maintains a fair and equitable balance for employers and employees within the reforms previously adopted by the Legislature, **the Sacramento advocates will oppose AB 2604.**

There currently is no registered support or opposition on file for this measure. AB 2604 is scheduled for hearing in the Assembly Insurance Committee on April 23, 2014.

AB 2616 (Skinner), which as amended on April 3, 2014, would expand the presumption of job-related injuries to cover hospital employees for methicillin-resistant staphylococcus aureus (MRSA), which is a skin infection. This presumption would exist for employees that provide direct patient care in an acute care hospital if the MRSA develops or manifests itself during the period of employment with the hospital.

Existing workers' compensation law designates illnesses and conditions that constitute a compensable injury, including MRSA, for various employees, such as firefighters, sheriffs, and certain peace officers, when the illness develops during the officer's time of service. AB 2616 would expand the presumption for MRSA beyond public safety employees by applying it to all employees who provide direct patient care in public, private, and non-profit hospitals.

The Chief Executive Office Risk Management Branch indicates that AB 2616 would eliminate the County's ability to dispute job-relatedness for MRSA for all hospital employees involved in direct patient care, and would notably increase the number and cost of workers' compensation payments made to employees. The CEO-RMB further notes that existing worker's compensation law provides reasonable and adequate protections for hospital employees without any need for a presumption. County Counsel concurs with CEO-RMB's concerns.

This office recommends an oppose position on AB 2616. Therefore, unless otherwise directed by the Board, consistent with existing policies to oppose legislation that: 1) mandates eligibility of additional employees for safety workers' compensation benefits or safety retirement benefit provisions; and 2) expands existing or creates new presumptions related to injuries, illnesses, diseases, or physical conditions that can be claimed as job-related for workers' compensation or service-connected disability retirement purposes, **the Sacramento advocates will oppose AB 2616.**

AB 2616 is substantially similar to **County-opposed AB 808 (Skinner) of 2012**, which would have expanded the presumption of job-related injuries to cover hospital employees for MRSA. AB 808 failed in the Senate on August 30, 2012. Additionally, AB 2616 is substantially similar to **County-opposed AB 375 (Skinner) of 2011**, which would have expanded the presumption of job-related injuries to cover all hospital employees for blood-borne infectious diseases, MRSA, and all neck and back injuries. AB 375 failed in the Senate on September 9, 2011.

AB 2616 has no registered support on file, and it is opposed by the California State Association of Counties.

AB 2616 is scheduled for hearing in the Assembly Insurance Committee on April 23, 2014.

SB 1339 (Cannella), which as introduced on February 21, 2014, would require that prior to contracting with certified Drug Medi-Cal (DMC) provider organizations, counties or the California Department of Health Care Services (DHCS) obtain criminal history information for the owners and key staff of DMC provider organizations. The criminal history information, which is to be provided by the California Department of Justice (DOJ), will summarize the existence and content of State and Federal arrests as well as State and Federal convictions. SB 1339 would require counties or DHCS to request subsequent arrest notifications from DOJ whenever a compelling need can be shown

and/or when counties or DHCS are screening prospective DMC provider organizations. Furthermore, SB 1339 would authorize counties and DHCS to contract with a certified DMC provider organization, regardless of the contents of the criminal history information received.

Existing law requires for the Drug Medi-Cal Program in which counties enter into contracts with DHCS to provide drug treatment services to Medi-Cal recipients, via community-based organizations and service providers. In instances where counties elect not to provide or administer this service, DHCS contracts directly with DMC service providers to provide these services within the respective county. Drug treatment services under the DMC Program are provided in an outpatient or residential treatment facility setting and include services such as: narcotic treatment; outpatient Naltrexone treatment; outpatient drug free; day care habilitative; and perinatal residential services.

In Los Angeles County, the Department of Public Health (DPH) is responsible for administering the DMC Program on behalf of the County through a contract with DHCS. Under the terms of the County's contract with DHCS, which was originally approved by the Board in 1994, DPH is responsible for ensuring that alcohol and drug treatment services deemed medically necessary are provided to Medi-Cal eligible recipients. In this role, DPH is responsible for, among other things: 1) directly contracting with program providers; 2) monitoring program services to ensure compliance with all rules, regulations, and contractual requirements; and 3) working with service providers to correct deficiencies.

SB 1339 would require that counties and DHCS have an additional tool to better understand the background of prospective DMC providers and the extent of any criminal history for owners and key staff. SB 1339 defines key staff as a person employed by or working as a contractor for the DMC provider organization who has either supervisory duties or duties that give him or her access to money.

The Department of Public Health indicates that SB 1339, if enacted, would help fortify the DMC Program, as well as their understanding of prospective contractors. DPH further indicates that the bill will help strengthen and/or improve the accountability of the owners and key staff of DMC provider organizations.

In addition, on August 21, 2013, the State's Joint Legislative Audit Committee (JLAC) approved an audit of the DMC program, including a review of three county agencies responsible for administering the DMC program. Los Angeles County was selected as one of the three counties that would be audited. The State Auditor currently anticipates

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their audit findings will be released in June 2014. Furthermore, the Governor's FY 2014-15 Proposed Budget includes 21 positions and \$2.2 million in total funding to continue the State's focus on DMC program integrity, as well as recertification efforts of all DMC program providers within the State.

This office and the Department of Public Health support SB 1339. Therefore, unless otherwise directed by the Board, consistent with existing policies to support legislation that improves oversight of the State's Drug Medi-Cal program by implementing program enhancements that include, but are not limited to: 1) improved collaboration, information sharing, and communication between the State and local jurisdictions; 2) adoption of formal policy and procedures for immediately advising counties when provider agencies are being decertified or suspended by the State and/or investigated by the California Department of Justice; 3) inclusion of in-depth administrative, programmatic, and financial reviews during the provider certification review process; and 4) increased provider engagement and training, **the Sacramento advocates will support SB 1339.**

Currently, there is no registered support or opposition on file for SB 1339. This measure is similar in nature to **County-supported AB 1644 of 2014**, which would require DHCS or counties, prior to entering into a contractual obligation, to obtain criminal history information on owners of DMC Program provider organizations to determine if owners have been convicted of any crimes involving fraud.

SB 1339 is scheduled for hearing in the Senate Health Committee on April 24, 2014.

In addition to SB 1339 and as previously reported, several other bills have been introduced to directly or indirectly improve and/or refine the State's Drug Medi-Cal Program. This office, in conjunction with the Department of Public Health and the Department of Mental Health, is reviewing and closely monitoring these bills to determine potential County impact.

We will continue to keep you advised.

WTF:RA
MR:OR:PC:RM:ma

c: All Department Heads
Legislative Strategist